

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
Charleston Division**

DEREK CLEMENTS, *et al.*,)
Plaintiffs)
v.) Civil Action No. 2:22-cv-02069-RMG
LLOYD J. AUSTIN, III,)
Defendant.)

)

**SECOND SUPPLEMENTAL FILING IN SUPPORT OF PLAINTIFFS' MOTION FOR A
PRELIMINARY INJUNCTION**

Plaintiffs, by and through counsel, respectfully submit this Second Supplemental Filing in Support of Plaintiffs' Motion for a Preliminary Injunction.

Plaintiffs filed their Reply in Support of Plaintiffs' Motion for a Preliminary Injunction on August 31, 2022. Plaintiffs' Counsel then supplemented this filing with additional documents, as Plaintiffs' Counsel were subsequently made aware of critically important additional documentation. For the same reasons, Plaintiffs again submit the above-captioned filing to update the Court with two material developments.

First, on Friday afternoon, September 23, 2022, the U.S. Coast Guard Academy ("USCGA") Cadet Plaintiffs were informed of their formal disenrollment and separation from the USCGA, effective immediately. This separation was unexpected and a marked departure from the Coast Guard's representation to Plaintiffs on September 6, 2022, that they would not be fully separated from the Coast Guard (*i.e.*, they would remain Cadets, even though not actually present at the USCGA, and would therefore continue to receive guaranteed pay). However, the

Deputy Commandant of Cadets, Commander Aaron J. Casavant (whose primary Military Occupational Specialty is Judge Advocate, *i.e.*, an attorney for the Coast Guard), telephoned and informed Plaintiffs N. Amie, T. Amie, S. Galdamez, D. Johnson, and J. Johnson of their imminent discharge. Exhibit 1. Each discharge was effective immediately, less than an hour-and-a-half before the close of the business day. Each Cadet was also informed that they would receive their discharge forms, a DD 214, later by email. USCGA confirmed with Plaintiffs' counsel via email on Monday, September 26, 2022, that every single one of the Cadets was discharged in this manner on Friday.

The removal of Plaintiffs N. Amie, T. Amie, S. Galdamez, D. Johnson, and J. Johnson for refusal to comply with an illegal vaccine order has now been completed, *despite* the Coast Guard representing to Plaintiffs and their Counsel on September 6, 2022, that the Cadets *would not* be separated from the Coast Guard until this Court made a ruling on the underlying Motion for a Preliminary Injunction. This development makes it clear that the harm facing each and every Plaintiff is a very real threat, one that is imminent for each Plaintiff absent court-ordered protections.

Second, on September 23, 2022, the Centers for Disease Control ("CDC") published updated interim COVID-19 guidance, stating that future COVID-19 advice is not contingent to *any extent* on vaccination status.¹ CDC will not be taking into consideration vaccination status in

¹See *Interim Infection Prevention and Control Recommendations for Healthcare Personnel During the Coronavirus Disease 2019 (COVID-19) Pandemic*, Centers for Disease Control (Sept. 23, 2022), <https://www.cdc.gov/coronavirus/2019-ncov/hcp/infection-control-recommendations.html> ("Anyone with even mild symptoms of COVID-19, **regardless of vaccination status**, should receive a viral test for SARS-CoV-2 as soon as possible.") (noting that the bolded language was in the original).

recommending any future masking or quarantine actions.² In other words, CDC now recognizes that there is no practical distinction between the vaccinated and unvaccinated when considering pandemic countermeasures, and that an unvaccinated individual is no more likely to contract and spread symptomatic COVID-19 than a vaccinated individual.³

This new CDC guidance directly contradicts Defendant's argument in its Opposition, in which Defendant stated: "An order allowing Plaintiffs to remain at, or re-enroll at, USCGA and USMA [U.S. Military Academy] would impose immediate and irreparable harm upon the Coast

² See *CDC Releases Updates to COVID-19 Infection Prevention and Control Guidance*, American Health Care Association & National Center for Assisted Living (Sept. 23, 2022), <https://www.ahcancal.org/News-and-Communications/Blog/Pages/CDC-Releases-Updates-to-COVID-19-Infection-Prevention-and-Control-Guidance.aspx#:~:text=Vaccination%20status%20no%20longer%20is,3%20of%20the%20main%20guidance> ("Vaccination status no longer is used to inform source control, screening testing, or post-exposure (e.g., work restriction, quarantine) recommendations.").

³ This latest CDC interim guidance demonstrates that CDC is finally catching up to reality with its COVID-19 policy guidance. Since the federal district court in *Feds for Medical Freedom v. Biden* issued its nationwide preliminary injunction in January 2022, unvaccinated federal employees across the entire federal workforce have remained in their working spaces, including in DoD and DHS. No. 3:21-cv-356, -- F. Supp. 3d --, 2022 WL 188329 (S.D. Tex. Jan. 21, 2022); see also *COVID-19 Vaccines*, DHS (last updated Feb. 11, 2022), <https://www.dhs.gov/employee-resources/covid-19-vaccines>. In all that time, there has been no apparent detriment to the workforce or to the pool of vaccinated personnel.

Moreover, this CDC interim guidance update advises that COVID-19 preventative measures should not be based on vaccination status. This undermines Defendant's assertion that the vaccine mandate is needed as a contemporary measure to combat the spread of COVID-19 and to maintain force-readiness. Instead, this guidance reinforces a simple premise: Defendant continues to operate based on an outdated impression of the pandemic. This was the case when Secretary Austin issued the mandate in August 2021, and continues to be the case now, as DoD and the U.S. Coast Guard continue to discipline and drum out service members based on this woefully outdated impression of vaccines.

The end result is that DoD and the Coast Guard are not only out of touch with the reality of COVID-19, but now are also out of touch with the latest CDC guidance.

Guard and the Academy. Plaintiffs' unvaccinated status threatens harm to themselves, other cadets, and faculty and staff." Opposition at 32 (ECF No. 41) (brackets added).

Accordingly, Plaintiffs believe it is necessary to inform the Court of these critical developments with respect to the harm experienced by individual Plaintiffs, and to make the Court aware of the CDC's long overdue change in position, both of which significantly undermine Defendant's position in the pending Motion.

Respectfully submitted,

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